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2015 IL App (5th) 140227-U

NO. 5-14-0227

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

TERESA STEPHENS,)	Appeal from the
)	Circuit Court of
Plaintiff,)	Madison County.
)	
v.)	No. 04-L-1318
)	
USF INSURANCE COMPANY,)	
)	
Defendant-Appellee,)	
)	
and)	
)	
USF INSURANCE COMPANY,)	
)	
Counterplaintiff,)	
)	
v.)	
)	
TERESA STEPHENS, CARROLLE KIBBY,)	
Individually and as Special Administrator of)	
the Estate of Douglas Kibby, Deceased,)	
)	
Counterdefendants,)	
)	
and)	
)	
THE SURINDER KUMAR TRUST,)	
)	
Counterdefendant-Appellant,)	
)	
and)	
)	

USF INSURANCE COMPANY,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
PREMIUM FINANCING SPECIALISTS,)	
INC.,)	
)	
Third-Party Defendant,)	
)	
and)	
)	
PREMIUM FINANCING SPECIALISTS,)	
INC.,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
D.R. SPARKS INSURANCE SERVICES,)	Honorable
)	Dennis R. Ruth,
Third-Party Defendant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Cates and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's entry of summary judgment in favor of the insurance company is affirmed and the entry of summary judgment in favor of the financing company is reversed where the insurance company's cancellation of a policy was effective on the date it was advised by the financing company through an invalid power of attorney to cancel the insured's policy due to the insured's failure to make requisite premium payments. The summary judgments concerning the two counter-defendants are modified accordingly and this cause is remanded for further proceedings with directions to allow amendments to all the parties' pleadings, including but not limited to naming the financing company as a defendant.

¶ 2 This appeal is taken from the trial court's order granting summary judgment in favor of USF Insurance Company (USF) and Premium Financing Specialists, Inc. (Premium Financing), and against plaintiff, Teresa Stephens (Stephens), and counterdefendants, Carrolle Kibby, individually and as special administrator of the estate of Douglas Kibby, deceased (Kibby), and the Surinder Kumar Trust (Kumar). The trial court found that USF effectively cancelled Stephens' insurance policy prior to the date of a fire that occurred on Stephens' property, despite the fact it was made at the request of Premium Financing's invalid power of attorney. We affirm in part, reverse in part, modify in part, and remand with directions.

¶ 3 **BACKGROUND**

¶ 4 This appeal concerns USF's purported cancellation of Stephens' financed insurance policy made at the request of Premium Financing through an invalid power of attorney.

¶ 5 On February 3, 2004, Stephens procured an insurance policy on a building she owned which covered commercial property damage or loss of the covered property and commercial general liability. The policy was issued by USF and was agreed to run from February 2004 through February 2005. Stephens financed the policy through a premium finance agreement with Premium Financing. The agreement also purportedly vested Premium Financing with a power of attorney granting it authority to request cancellation of the policy if Stephens failed to make the requisite premium payments.

¶ 6 On July 8, 2004, Stephens failed to make the required premium payments due in accordance with the financing agreement, after which Premium Financing sent a notice of

intent to cancel Stephens' policy to Stephens and USF providing that Premium Financing would request cancellation of the policy if Stephens failed to make her payments. On August 2, 2004, Premium Financing advised USF to cancel Stephens' policy effective August 5, 2004, due to Stephens' failure to make payments in accordance with the financing agreement. USF complied with Premium Financing's request and cancelled Stephens' insurance policy effective August 5, 2004.

¶ 7 On August 17, 2004, Stephens' property was damaged by a fire which resulted in the death of Kibby, who was a tenant on Stephens' property. The fire also damaged an adjacent property owned by Kumar. On August 18, 2004, Stephens submitted a fire claim to USF pursuant to the commercial property coverage portion of her insurance policy. Approximately two weeks later, USF denied coverage asserting the policy had been effectively cancelled prior to the fire.

¶ 8 On November 30, 2004, Stephens filed a declaratory action against USF seeking coverage for the property damage that occurred as a result of the fire. In response, USF filed a counterclaim for declaratory judgment seeking a judicial determination that the policy provided no coverage for Stephens because it had been cancelled prior to the date of the fire.

¶ 9 On December 15, 2004, Kibby filed a separate lawsuit against Stephens for damages resulting from the fire. Stephens tendered the defense of Kibby's lawsuit to USF pursuant to the commercial liability coverage portion of her insurance policy. In response on June 22, 2005, USF filed a first amended counterclaim adding Kibby as an

interested party to the declaratory action against Stephens, seeking a judicial determination that USF did not owe a duty to defend or indemnify Stephens for damages alleged by Kibby because Stephens' policy had been effectively cancelled prior to the fire.

¶ 10 On March 29, 2005, Kumar also filed a separate lawsuit against Stephens seeking recovery for damages resulting from the fire. Stephens again tendered the defense of Kumar's lawsuit to USF. On July 12, 2006, USF filed a second amended counterclaim for declaratory judgment adding Kumar as an additional interested party to the declaratory action against Stephens, seeking a judicial determination that it did not owe a duty to defend or indemnify Stephens for the damages alleged in the Kumar complaint because the policy had been cancelled prior to the fire. USF also alleged Stephens' notice was late, as Stephens tendered the defense of Kumar's complaint to USF six months after service of the complaint.

¶ 11 On March 2, 2007, USF filed a motion for summary judgment asserting the undisputed facts indicated no coverage was available to Stephens under her insurance policy because, upon notice to Stephens and USF, Premium Financing, acting as Stephens' attorney-in-fact, cancelled the policy for Stephens' nonpayment of the premium prior to the date of the fire. Also on March 2, 2007, Premium Financing filed a motion to join USF's motion for summary judgment. On March 30, 2007, Kumar filed a response to USF's motion for summary judgment. On April 13, 2007, USF filed a reply to Kumar's response. Also on April 13, 2007, Premium Financing filed a motion to join USF's reply to Kumar's response.

¶ 12 On December 2, 2008, Kumar filed a cross-motion for summary judgment on count III of USF's second amended counterclaim for declaratory judgment. Kumar argued USF had a duty to defend and indemnify Stephens in the underlying lawsuit filed by Kumar because the alleged cancellation of the insurance policy before the fire loss was invalid, as the premium finance agreement lacked a date as required by section 513a9(a) under the Premium Financing Act (Act) of the Illinois Insurance Code (Insurance Code) (215 ILCS 5/513a9(a) (West 2008)). On January 16, 2009, USF and Premium Financing filed responses to Kumar's motion. Kumar then filed its reply brief, and on March 6, 2009, Kibby joined Kumar's motion for summary judgment.

¶ 13 On May 6, 2011, the parties appeared before the trial court regarding the cross-motions for summary judgment. The court entered an order continuing the matter so the parties could verify that all relevant case law and filings were considered before the court made a ruling. On June 30, 2011, USF filed a supplemental brief in support of its motion for summary judgment.

¶ 14 On May 28, 2013, the court entered an order granting summary judgment in favor of USF and Premium Financing and against Stephens, Kumar, and Kibby. While the court indicated Premium Financing lacked a valid power of attorney to request cancellation of the policy because the premium financing agreement was not dated and was, therefore, noncompliant with section 513a9(a) of the Act, it still found USF validly cancelled Stephens' insurance policy prior to the fire. The court ordered that Stephens' insurance policy was not in effect on the date of the fire, USF had no duty to indemnify Stephens for damages resulting from the fire, and USF had no duty to defend or

indemnify Stephens in the lawsuits filed by Kumar and Kibby. The court based its ruling on *Selective Insurance Co. v. Urbina*, 371 Ill. App. 3d 27, 861 N.E.2d 1145 (2007).

¶ 15 Kumar then filed a motion pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010) seeking leave to file an application for immediate appeal from the trial court's May 28, 2013, order, which the court granted. On May 19, 2014, Kumar filed its application for leave to appeal, which this court granted. This matter, which has been joined by Kibby, is now before this court on a certified issue for appellate review.

¶ 16 ANALYSIS

¶ 17 The issue on appeal concerns whether USF's cancellation of Stephens' policy was effective prior to the date of the fire, despite the fact it was made at the request of Premium Financing's invalid power of attorney. Kumar and Kibby allege the trial court erred in granting summary judgment in favor of USF and Premium Financing and against Stephens, Kumar, and Kibby after finding Stephens' policy was cancelled prior to the date of the fire. Pursuant to Supreme Court Rule 308, the following question has been certified.

"Does an insurer have the right to cancel an insurance policy at the direction of a premium finance company where the contract between the premium finance company and the named insured that purportedly gave the premium finance company the power of attorney to request cancellation of the policy was undated and, therefore, did not comply with the Illinois Premium Finance Act's requirement that the premium finance agreement be dated[?]"

¶ 18 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). A trial court's rulings on motions for summary judgment are reviewed *de novo*. *La Salle Bank, N.I. v. First American Bank*, 316 Ill. App. 3d 515, 521, 736 N.E.2d 619, 624 (2000).

¶ 19 Kumar and Kibby argue USF did not have the right to cancel Stephens' insurance policy at the request of Premium Financing because the contract between Stephens and Premium Financing, which granted Premium Financing the power of attorney to request cancellation of the policy, was undated and, therefore, in violation of the Act. Kumar and Kibby contend this noncompliance negates USF's cancellation of Stephens' policy and, as a result, Stephens' policy was in effect on the date of the fire.

¶ 20 Premium finance companies are regulated by section 513a1 of the Insurance Code. 215 ILCS 5/513a1 (West 2012). A premium finance company is defined under the Code as "any person engaged in the business of financing insurance premiums, of entering into premium finance agreements with insureds, or of acquiring premium finance agreements." 215 ILCS 5/513a2(d) (West 2012). In the case at bar, Premium Financing falls under this definition and is, therefore, subject to the regulations of this particular section of the Insurance Code.

¶ 21 Pursuant to section 513a9(a) of the Act, "[a] premium finance agreement must be dated and signed by or on behalf of the named insured." 215 ILCS 5/513a9(a) (West

2012). Further, section 513a11(a) provides that a premium finance company may request cancellation of an insurance policy upon default by the insured "[w]hen a premium finance agreement contains a power of attorney enabling the premium finance company to cancel" the insurance contract, but such cancellation may not be made by a premium finance company "unless the request for cancellation is effectuated under this Section." 215 ILCS 5/513a11(a) (West 2012).

¶ 22 Here, the parties do not dispute that the premium financing agreement between Stephens and Premium Financing on which USF relied concerning its cancellation of Stephens' policy lacked a date as required under the Act and, therefore, was not effective in granting Premium Financing authority to act as Stephens' attorney-in-fact when it requested that USF cancel the policy. The trial court nevertheless found USF effectively cancelled Stephens' policy prior to the date of the fire, despite the fact that USF's cancellation was made at the request of Premium Financing's invalid power of attorney. For the following reasons, we agree with the trial court.

¶ 23 The trial court based its findings on the First District's ruling in *Selective Insurance Co. v. Urbina*, 371 Ill. App. 3d 27, 861 N.E.2d 1145 (2007). In *Selective Insurance*, Jorge and Antonio Urbina entered into a premium financing agreement with Lincoln Acceptance Company (Lincoln), in which the Urbinas contracted to make premium payments to Lincoln for an automobile policy issued by Universal Casualty Company (Universal). The agreement granted Lincoln a power of attorney to request cancellation of the policy if the Urbinas failed to make premium payments.

¶ 24 The agreement was not signed by the Urbinas or Lincoln's authorized agent as is required by section 513a9(a) of the Act (215 ILCS 5/513a9(a) (West 2012)). After the insurance policy was issued, the Urbinas failed to make the required premium payments. Lincoln then contacted Universal requesting cancellation of the policy, and Universal complied with Lincoln's request.

¶ 25 Jorge Urbina was subsequently involved in an automobile accident with an insured of Selective Insurance Company (Selective). Selective filed a negligence action seeking damages arising out of the accident, and obtained a judgment against the Urbinas. Urbinas' insurer, Universal, declined coverage when Selective sought to enforce the judgment, claiming the policy had been cancelled prior to the accident for the Urbinas' nonpayment of premiums in accordance with the premium financing agreement.

¶ 26 In response, Selective argued Lincoln had no authority to request cancellation of the policy because the agreement lacked the signature required by section 513a9(a) of the Act. Selective argued that since Lincoln was acting in the absence of Urbina's power of attorney when it requested cancellation of the policy, it was in violation of section 513a11 of the Act and, therefore, the policy was not effectively cancelled by Universal but remained in effect on the date of the accident.

¶ 27 On appeal, the First District rejected Selective's argument, finding Universal effectively cancelled the Urbinas' insurance policy prior to the automobile accident, despite the fact it was made at the request of Lincoln's invalid power of attorney. Specifically, the court noted:

"Since the premium finance contract contained in the record does not contain Urbina's signature at the bottom, we shall assume for purposes of this appeal that Lincoln did not have the power of attorney to cancel the insurance policy. However, once Universal received the cancellation request, it was within its right to honor the request and act accordingly. The Code did not require Universal to independently verify whether Lincoln had fulfilled its statutory obligations by having in its possession a valid power of attorney. Lincoln's violation of the Code did not operate to negate the effectiveness of Universal's cancellation. To reiterate the principle stated repeatedly throughout the preceding cases we have discussed, section 513a11 addresses itself solely to premium finance companies and imposes no obligations or sanctions on insurance companies that act in accordance with cancellation requests." *Selective Insurance Co.*, 371 Ill. App. 3d at 35, 861 N.E.2d at 1151-52.

¶ 28 In the instant case, Stephens entered into a premium finance agreement with Premium Financing, in which Stephens agreed to make premium installment payments to Premium Financing for an insurance policy issued by USF to Stephens. Similar to *Selective Insurance*, the premium finance agreement provided Premium Financing with a power of attorney to request cancellation of the policy if Stephens failed to make the premium installment payments.

¶ 29 As in *Selective Insurance*, Stephens failed to make her premium payments, after which Premium Financing requested that USF cancel the policy. After USF cancelled the policy, a fire occurred which caused the death of Kibby and damaged Stephens' property

as well as Kumar's adjacent property. Coverage was sought pursuant to Stephens' USF policy, but declined by USF which asserted the policy was cancelled prior to the fire for Stephens' nonpayment of premiums.

¶ 30 After careful review of the record, we find the same issue being raised in this appeal has already been decided by the First District in *Selective Insurance*, namely whether a premium finance company's undisputed violation of section 513a9(a) and section 513a11(a) of the Act negates an insurance company's cancellation of an insurance policy when made at the request of the finance company. Accordingly, we find *Selective Insurance* indicates USF's cancellation of Stephens' policy was effective despite the fact it was made at the request of Premium Financing's invalid power of attorney, as USF had no duty under the Insurance Code to independently verify whether Premium Financing had fulfilled its statutory obligations by having in its possession a valid power of attorney. Consequently, the trial court's entry of summary judgment in favor of USF was proper and is affirmed.

¶ 31 Kumar and Kibby make several arguments in support of their position that the trial court erred in granting USF summary judgment. First, Kumar argues there are no compelling reasons to follow the court's reasoning in *Selective Insurance*. Kumar indicates that a decision from one district of the appellate court is only persuasive authority for another district, and the decision need not be followed unless there are compelling reasons to do so. *In re May 1991 Will County Grand Jury*, 152 Ill. 2d 381, 604 N.E.2d 929 (1992). While we agree it is well settled that one appellate district is not

bound to the decisions of other appellate districts, we disagree with Kumar and find there are compelling reasons to following the court's reasoning in *Selective Insurance*.

¶ 32 While one district is not bound to follow the decisions of other districts, there may be reasons to do so when dealing with similar facts and circumstances, unless a district has made a determination of its own contrary to that of another district. *People v. Wilson*, 2014 IL App (1st) 113570, ¶ 39, 19 N.E.3d 142. Here, the facts are substantially similar to those of *Selective Insurance*, thereby warranting the same result.

¶ 33 Kumar further asserts the *Selective Insurance* decision "clearly deviates" from a prior statement of law, and in support of its argument cites to *Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill. App. 3d 483, 648 N.E.2d 971 (1995). Kumar contends this court is faced with an issue that lacks controlling authority from the supreme court, and, therefore, there is no compelling reason to follow another appellate district's reasoning that is inconsistent with prior findings. Kibby also cites to *Alliance Acceptance* and argues the insurer has a duty to refuse cancellation of an insurance policy unless the premium finance agreement contains a power of attorney. We disagree with Kumar and Kibby's assertions regarding *Alliance Acceptance*, as we find it is distinguishable from *Selective Insurance*.

¶ 34 As the trial court stated in its order from which this appeal is taken:

"[T]here is a significant difference between the two cases. While *Alliance Acceptance* does lend support to Kumar & Kibby's position, the issue of what is the effect of a premium finance company's invalid power of attorney on an

insurance company's cancellation was not addressed in *Alliance Acceptance Co.* That issue was directly ruled upon in *Selective Insurance* and is directly before this Court in these motions. As such this Court is required to follow the holding in *Selective Insurance*."

¶ 35 In *Alliance Acceptance*, a premium finance company filed suit against an insurer for recovery of unearned premiums after the cancellation of insurance policies. *Alliance Acceptance*, 271 Ill. App. 3d at 486, 648 N.E.2d at 972-73. It was undisputed that the premium finance company did not have a written premium finance agreement with the defendants' insureds in accordance with the Insurance Code. Thus, the court indicated the premium finance company did not have a power of attorney enabling it to request cancellation of the insurance contracts issued by the defendants to the insureds, and ruled in favor of the insurance company. The court noted "the Insurance Code requires a written premium finance agreement between the premium finance company and the insured/debtor," and that "[w]ithout a power of attorney, the premium finance company has no right or authority to seek cancellation of the insurance policy and the insurer has no right or obligation to cancel that policy." *Alliance Acceptance*, 271 Ill. App. 3d at 491, 492, 648 N.E.2d at 976.

¶ 36 After careful review of *Alliance Acceptance*, we find the court addressed the effect on the premium finance company's right to seek cancellation of the insurance policy and the return of unearned premiums, which is irrelevant to the instant case. While the court indicated an insurer has no right to cancel a policy at the request of a premium finance company that lacks a power of attorney, it never addressed whether an insurer's policy

cancellation is effective despite being made at the request of a finance company through an invalid power of attorney. In contrast, *Selective Insurance* specifically addresses the effect of an insurance company's policy cancellation when made at the request of a premium finance company through an invalid power of attorney. Accordingly, we reject Kumar and Kibby's arguments pertaining to *Alliance Acceptance*.

¶ 37 Kumar next asserts the *Selective Insurance* decision imposes a "fundamentally unfair burden" on insureds, and that an insured's remedy should not only be against the premium finance company when a premium finance company violates section 513a. Kibby further argues USF was obligated to review Premium Financing's power of attorney "just as any other recipient of a power of attorney in order to validate the extent of authority," and makes reference to the example of a medical provider being required to obtain a copy of a valid power of attorney or medical authorization before disclosing a person's confidential records to someone purporting to be that person's power of attorney.

¶ 38 We reject this argument for the reasons provided above concerning the court's reasoning in *Selective Insurance*, namely that USF had no statutory obligation under the Insurance Code to independently verify whether Premium Financing had fulfilled its statutory obligations by having in its possession a valid power of attorney. Furthermore, we find nothing that indicates the *Selective Insurance* decision imposes a fundamentally unfair burden on insureds.

¶ 39 Kumar next argues the cases cited by USF do not involve the issue of whether a premium finance company held a valid power of attorney to request cancellation of an

insured's policy, and contends these cases are distinguishable from the instant case. The three cases USF makes reference to in its brief are the same three cases referenced by the court in *Selective Insurance: Universal Fire & Casualty Insurance Co. v. Jabin*, 16 F.3d 1465 (7th Cir. 1994); *Illinois Insurance Guaranty Fund v. Evanston Paper & Paper Shredding Co.*, 272 Ill. App. 3d 405, 649 N.E.2d 568 (1995); and *Haft v. Charter Oak Fire Insurance Co.*, 262 Ill. App. 3d 933, 635 N.E.2d 843 (1994).

¶ 40 The court in *Selective Insurance* acknowledged that the three cases above were distinguishable from its case at bar. Nonetheless, the court turned to those three decisions for guidance. As the court explained:

"Although the instant case does not involve a violation of the notice requirement of the [Insurance] Code, we believe the same reasoning should apply with respect to powers of attorney." *Selective Insurance Co.*, 371 Ill. App. 3d at 35, 861 N.E.2d at 1151.

¶ 41 We find the court's reasoning in *Selective Insurance* concerning powers of attorney was appropriate. Accordingly, we reject Kumar's argument as it pertains to the three cases cited above.

¶ 42 Kumar's next argument concerns section 143.14 of the Insurance Code (215 ILCS 5/143.14 (West 2012)). Section 143.14 expressly imposes a duty on the insurer by stating that the insurer is required to send a notice of cancellation to the named insured to effectuate cancellation of the policy. 215 ILCS 5/143.14 (West 2012). Kumar contends section 513a should be interpreted similarly to section 143.14, such that an insurer has an

independent obligation to verify whether a premium finance company has a valid power of attorney to request cancellation of an insured's policy. We disagree.

¶ 43 Our supreme court has noted that the primary objective in construing a statute is to give effect to the intent of the legislature, and the most reliable indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. *In re J.L.*, 236 Ill. 2d 329, 339, 924 N.E.2d 961, 967 (2010). Where the statutory language is clear and unambiguous, it will be given effect as written without resort to other aids of construction. *J.L.*, 236 Ill. 2d at 339, 924 N.E.2d at 967. A court may not depart from a statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express. *J.L.*, 236 Ill. 2d at 339, 924 N.E.2d at 967.

¶ 44 While section 143.14 expressly imposes a duty on the insurer regarding notices of cancellation, we find no express language in section 513a9(a) or 513a11(a) which specifically directs requirements or obligations to the insurer. The only obligations and duties expressed in these sections of the Insurance Code are specifically directed to premium finance companies. Section 513a9(a) provides that "[a] premium finance agreement must be dated and signed by or on behalf of the named insured," while section 513a11(a) provides that a policy may not be cancelled through a power of attorney "by the premium finance company unless the request for cancellation is effectuated under this Section." 215 ILCS 5/513a9(a), a11(a) (West 2012). Accordingly, we reject Kumar's argument concerning the interpretation of section 513a of the Act.

¶ 45 Finally, Kumar argues it would be disingenuous for USF to assert it relied on the decision rendered by *Selective Insurance* in 2007 because USF cancelled Stephens' policy in 2004. Kumar alleges that the law, as it existed at the time Stephens' policy was cancelled in 2004, supports Kumar's position that insurers should bear the burden to verify a premium finance company's authority to request cancellation of an insured's policy. We disagree.

¶ 46 After review of the record, we find USF never asserted it relied on *Selective Insurance* when it cancelled Stephens' policy. Rather, USF asserted it followed the applicable provisions of the Insurance Code when it cancelled Stephens' policy. *Selective Insurance* interpreted the obligations and duties of premium financing companies and insurers under the Insurance Code, and we find this decision merely confirms USF was in compliance with the Insurance Code when it cancelled Stephens' policy at Premium Financing's request. Kumar points out that the policy principles from *Alliance Acceptance* were in effect at the time of Stephens' policy cancellation unlike *Selective Insurance*, which include that the insurer has "no right or obligation" to cancel a policy at a premium financing company's request in the absence of a valid power of attorney. But, *Alliance Acceptance* does not address the effect of an insurer's cancellation of a policy when made at the request of a premium financing company's invalid power of attorney. Accordingly, we reject this argument.

¶ 47 We next address the trial court's order as it pertains to Premium Financing, which joined USF's motion for summary judgment. While we affirm the trial court's finding

concerning USF for the reasons provided above, we find the trial court erred in granting summary judgment in favor of Premium Financing.

¶ 48 As we note above, the parties do not dispute that the premium financing agreement between Stephens and Premium Financing on which USF relied in cancelling Stephens' insurance policy lacked a date as required under the Act and, therefore, was not effective in granting Premium Financing authority to act as Stephens' attorney-in-fact when it requested that USF cancel the policy. While we find USF is not responsible for the faulty premium finance agreement between Premium Financing and Stephens, we find no reason why Premium Financing should not be held responsible.

¶ 49 Pursuant to the Insurance Code and the provisions governing premium finance companies, "[a] premium finance agreement must be dated and signed by or on behalf of the named insured." 215 ILCS 5/513a9(a) (West 2012). Section 513a11 of the Insurance Code provides for the method of cancellation of an insurance policy by a premium finance company and states, in relevant part:

"When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the premium finance agreement, the insurance contract or contracts shall not be cancelled by the premium finance company unless the request for cancellation is effectuated under this Section." 215 ILCS 5/513a11(a) (West 2012).

¶ 50 Since it is undisputed that Premium Financing lacked a valid premium financing agreement with Stephens containing a power of attorney, we find the trial court erred in

granting summary judgment in favor of Premium Financing. The premium financing agreement at issue was not dated as is required under the Insurance Code. Accordingly, we reverse the trial court's judgment granting Premium Financing's motion for summary judgment and remand with directions to allow amendments to all the parties' pleadings, including, but not limited to, naming Premium Financing as a defendant.

¶ 51

CONCLUSION

¶ 52 In light of the foregoing, we affirm the judgment of the circuit court of Madison County granting USF's motion for summary judgment, reverse the judgment granting Premium Financing's motion for summary judgment, modify the Kumar and Kibby summary judgments accordingly, and remand for further proceedings with directions to allow amendments to all of the parties' pleadings, including but not limited to naming Premium Financing as a defendant. USF's motion to strike Kibby's brief is denied.

¶ 53 Affirmed in part, reversed in part, modified in part, and remanded with directions.